

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-221572

DATE: April 9, 1986

MATTER OF: Agro Construction and Supply Co., Inc.

## DIGEST:

Due to special experience requirement in invitation for bids (IFB), which agency determined was not necessary to meet its needs, only one of five actual bidders was eligible for award and other potential bidders were excluded from competing. Canceling the IFB after bid opening in order to resolicit without the experience requirement therefore was proper since both actual and potential bidders would be prejudiced by award under the original IFB.

Agro Construction and Supply Co., Inc., protests the decision by the Fish and Wildlife Service, Department of the Interior to cancel invitation for bids (IFB) No. FWS 2-86-05 for construction of a corral system and to issue a new IFB with revised specifications and requirements. Agro maintains that the specifications in the original IFB adequately described the work required and that the revisions proposed by the agency either are unnecessary or will not meet the agency's needs. We deny the protest.

The IFB called for construction of corrals for buffalo and longhorns at the Wichita Mountains Wildlife Refuge, Oklahoma. The IFB was issued on November 1, 1985, with bid opening set for December 2. Amendment No. 1 to the IFB, also issued on November 1, in part added the following provision:

"All offerors shall be required to provide proof of similar corral construction experience by virtue of successful construction of at least three projects in excess of \$50,000 each consisting of similar welded steel construction including handling and sorting facilities."

Five bids were received, ranging from \$492,400 (submitted by Johnson Engineering Co., Inc.) to \$845,000. Agro submitted the second lowest bid (\$562,310). According to the agency, the total amount of funds then available for the contract was \$515,000. At bid opening, the low bidder, Johnson Engineering, was found ineligible for award for failure to meet the special experience requirement added to the IFB by Amendment No. 1. The agency subsequently found that only one of the five bidders, Agro, satisfied the experience requirement.

By letter dated December 12, the contracting officer notified all bidders that he had decided to cancel the IFB and issue a new solicitation. The decision to cancel was based on the contracting officer's determination that certain revisions to the specifications would lower the cost of the project, and that the special experience requirement unnecessarily discouraged potential bidders from competing.

In its report on the protest, the agency originally argued that the cancellation was proper because all bids except Johnson's exceeded the amount of funds available for the contract; the revised specifications would result in lower costs to the government; and the revised IFB would omit the experience requirement which had hindered full and open competition. In a subsequent submission, the agency advised that the funding limitation no longer was a problem because additional funds had since been made available for the project. The agency also conceded that the proposed revisions to the specifications would increase, not decrease, the cost of the project as a whole. Nevertheless, the agency maintains that cancellation of the IFB was proper because (1) the experience requirement, which will be eliminated from the revised IFB, unnecessarily limited the field of competition; and (2) the revised specifications will better meet the agency's needs.

Agro argues that the specifications in the original IFB adequately describe the agency's needs. In addition, Agro maintains that the experience requirement ensured that the successful bidder would be capable of performing under the contract. Agro also states that the experience requirement was a significant factor in its decision to submit a bid, since Agro assumed that it would be competing only against firms which, like Agro, had the specialized experience called for by the IFB.

We find that it was proper for the agency to cancel the IFB in order to eliminate the special experience requirement and issue a new IFB. Because of the potential

adverse impact on the competitive bidding system of canceling an IFB after bid opening, the contracting agency must have a compelling reason to do so. Dyneteria, Inc., B-211525.2, Oct. 31, 1984, 84-2 CPD ¶ 484; Federal Acquisition Regulation, 48 C.F.R. § 14.404-1(a)(1) (1984). When an agency's decision to cancel is challenged, a key factor in deciding whether a compelling reason for the cancellation exists is whether award of a contract under the original IFB would result in prejudice to other actual or potential bidders. See Doug Lent, Inc., B-209287.2, June 21, 1983, 83-2 CPD ¶ 9 (cancellation was proper where potential bidders were precluded from bidding due to defective specification); Haughton Elevator Division, Reliance Electric Co., 55 Comp. Gen. 1051, 1058 (1976), 76-1 CPD ¶ 294 (prejudice to actual and potential bidders due to inclusion of unnecessary experience requirement in IFB was compelling reason to cancel).


Here, the agency concluded that the special experience requirement is not necessary to ensure that the firms participating in the competition are qualified to perform under the contract; the protester has not shown that this conclusion is unreasonable. The agency also reasonably determined that the special experience requirement had a significant adverse effect on competition since four of the five bidders, including the low bidder, did not satisfy the requirement. Awarding a contract under the original IFB thus would prejudice the low bidder who did not meet the requirement as well as other firms which may have bid if the experience requirement had not been included in the IFB. In addition, we note that the agency's cancellation of the IFB in order to issue a revised IFB without the restrictive experience requirement is consistent with the requirement in the Competition in Contracting Act, 41 U.S.C.A. § 253(a)(1)(A) (West Supp. 1985), that contracting agencies obtain "full and open competition" in conducting procurements. Accordingly, we find that the agency had a compelling reason to cancel based on its determination that actual and potential bidders were unreasonably excluded and full and open competition therefore was not obtained. See Lesko Associates, Inc., B-209703, Apr. 22, 1983, 83-1 CPD ¶ 443; Gould, Inc., B-190787, Aug. 31, 1978, 78-2 CPD ¶ 158.

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In addition to removing the experience requirement, the agency cited the need to revise the IFB to include the agency's increased requirements as a reason for canceling the IFB. We need not consider the protester's objections in this regard because, even if Agro's assertions concerning the specification revisions are correct, the cancellation nevertheless is proper, based on the agency's decision to eliminate the special experience requirement.

Agro requested that it be awarded its bid preparation costs and the costs of pursuing the protest. Recovery of costs is allowed only where a protest is found to have merit. 31 U.S.C.A. § 3554(c)(1) (West Supp. 1985); Bid Protest Regulations, 4 C.F.R. § 21.6(d) (1985). Since we have denied the protest, we also deny Agro's claim for recovery of costs.

*for*   
Harry R. Van Cleve  
General Counsel